The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §335.508.

Section 335.508 is adopted *without changes* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9601) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amended Texas Health and Safety Code (THSC), Chapter 361 by adding new §361.0905 (Regulation of Medical Waste) requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking moves the rules related to medical waste from 30 TAC Chapter 330 (Municipal Solid Waste) to new 30 TAC Chapter 326 (Medical Waste Management). HB 2244 was effective immediately on June 10, 2015, upon the Governor signing it into law. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapters 326 and 330.

Section Discussion

Subchapter R: Waste Classification

§335.508, Classification of Specific Industrial Solid Wastes

Section 335.508(4), concerning classification of medical waste as type 2 waste, is amended to update a reference to the medical waste provisions from Chapter 330, Subchapter Y to adopted new Chapter 326.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement HB 2244 by updating a cross-reference to the medical waste rules which are being relocated into a new chapter in a corresponding rulemaking. The updated cross-reference is not expected to have a significant impact on industry or the public.

Furthermore, the rule does not meet any of the four applicability requirements listed in

Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking is only updating a cross-reference and does not meet any of these applicability requirements.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Comments were not received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted amendment is to implement HB 2244 by updating a cross-reference to the medical waste rules which are being moved to a new Chapter 326 in a corresponding rulemaking. The updated cross-reference is not

expected to have a significant impact on industry or the public.

The amendment does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rule. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during

the public comment period. Comments were not received on the CMP.

Public Comment

The commission held a public hearing on January 25, 2016. The comment period closed on February 8, 2016. The commission received a comment from Titanium Environmental.

Response to Comments

Comment

Titanium Environmental Commented that it is unclear in proposed Chapter 326 and amended Chapter 335 if a Class 2 Texas Waste Code is required on the Solid Waste Registration of an exempt medical waste operator for on-site medical waste generation and storage, and to please clarify.

Response

Chapter 335 amendment updates references to the medical waste provisions from Chapter 330, Subchapter Y to Chapter 326, in the classification of medical waste as type 2 waste. Exempt medical waste facilities for on-site medical waste generation and storage are not industrial facilities, and therefore, are not required to obtain a Class 2 Texas Waste Code for the Solid Waste Registration. No changes will be made in this

chapter in regards to this comment.

SUBCHAPTER R: WASTE CLASSIFICATION

§335.508

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§335.508. Classification of Specific Industrial Solid Wastes.

The following nonhazardous industrial solid wastes shall be classified no less stringently than according to the provisions of this section.

(1) Industrial solid waste containing asbestos material identified as regulated asbestos containing material (RACM), as defined in 40 Code of Federal Regulations (CFR) Part 61, shall be classified as a Class 1 waste.

(2) Empty containers that are a solid waste as defined in §335.1 of this title (relating to Definitions) shall be subject to the following criteria:

(A) A container which has held a Hazardous Substance as defined in 40 CFR Part 302, a Hazardous waste, a Class 1 waste, or a material which would be classified as a Hazardous or Class 1 waste if disposed of, and is empty per §335.41(f)(2) of this title (relating to Purpose, Scope and Applicability concerning empty containers):

(i) shall be classified as a Class 1 waste;

(ii) may be classified as a Class 2 waste if the container has a capacity of five gallons or less; or

(iii) may be classified as a Class 2 waste if the container has a capacity greater than five gallons and:

(I) the residue has been completely removed either by triple rinsing with a solvent capable of removing the waste, by hydroblasting, or by other methods which remove the residue; and

(II) the container has been crushed, punctured, or subjected to other mechanical treatment which renders the container unusable; or

(iv) may be classified as a Class 2 waste if the container is to be sent for recycling and:

(I) the residue has been completely removed either by triple rinsing with a solvent capable of removing the waste, by hydroblasting, or by other methods which remove the residue; and

(II) the container is not regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 40 CFR Part 165; and

(III) the generator maintains documentation in accordance with §335.513 of this title (relating to Documentation Required) that demonstrates the container is being recycled; and

(IV) the recycling activity involves shredding, dismantling, scrapping, melting, or other method that renders the container unusable.

(B) A container which has held a Class 2 waste shall be classified as a Class 2 waste.

(C) Aerosol cans that have been depleted of their contents, such that the inner pressure of the can equals atmospheric pressure and minimal residues remain in the can, may be classified as a Class 2 wastes.

(3) Plant trash refers only to paper, cardboard, food wastes, and general plant trash. These wastes shall be subject to the following classification criteria.

(A) The form code 999 ("PLANT TRASH") refers only to Class 2 waste originating in the facility offices or plant production area that is composed of paper, cardboard, linings, wrappings, paper and/or wooden packaging materials, food wastes, cafeteria waste, glass, aluminum foil, aluminum cans, aluminum scrap, stainless steel, steel, iron scrap, plastics, styrofoam, rope, twine, uncontaminated rubber, uncontaminated wooden materials, equipment belts, wirings, uncontaminated cloth, metal bindings, empty containers with a holding capacity of five gallons or less, uncontaminated floor sweepings, and/or food packaging, that are produced as a result of plant production,

manufacturing, laboratory, general office, cafeteria, or food services operations. Also included in plant trash are personal cosmetics generated by facility personnel, excluding those cosmetics generated as a result of manufacturing or plant production operations. Plant refuse shall not include oils, lubricants of any type, oil filters, contaminated soils, sludges, wastewaters, bulk liquids of any type, or Special Wastes as defined by §330.3 [§330.2] of this title (relating to Definitions).

(B) The form code 902 ("SUPPLEMENTAL PLANT PRODUCTION REFUSE") only applies to Class 2 Waste from production, manufacturing, or laboratory operations. The total amount of the supplemental plant production refuse (form code 902) shall not exceed 20% of the annual average of the total plant refuse (form code 999) volume or weight, whichever is less. Individual wastes which have been designated supplemental plant production refuse may be designated by the generator at a later time as a separate waste in order to maintain the supplemental plant production refuse at or below 20% of the appropriate plant refuse amount. For any waste stream included with, removed from, or added to the supplemental plant refuse designation (form code 902), the generator must provide the notification information required pursuant to this subchapter.

(4) Medical wastes which are subject to the provisions of Chapter 326 [330, Subchapter Y] of this title (relating to Medical Waste Management) shall be designated as Class 2 wastes.

(5) Media contaminated by a material containing greater than or equal to 50 parts per million total polychlorinated biphenyls (PCBs) and wastes containing greater than or equal to 50 ppm PCBs shall be classified as Class 1.

(6) Wastes which are petroleum substances or contain contamination from petroleum substances, as defined in §335.1 of this title shall be classified as a Class 1 waste until a generator demonstrates that the waste's total petroleum hydrocarbon concentration (TPH) is less than or equal to 1,500 parts per million (ppm). Where hydrocarbons cannot be differentiated into specific petroleum substances, then such wastes with a TPH concentration of greater than 1,500 ppm shall be classified as a Class 1 waste. Wastes resulting from the cleanup of leaking underground storage tanks (USTs) which are regulated under Chapter 334, Subchapter K of this title (relating to Storage, Treatment and Reuse Procedures for Petroleum Substance Contaminated Soil [Waste]) are not subject to classification under this subchapter.

(7) Wastes generated by the mechanical shredding of automobiles, appliances, or other items of scrap, used, or obsolete metals shall be handled according

to the provisions set forth in Texas Health and Safety Code, §361.019, until the commission develops specific standards for the classification of this waste and assures adequate disposal capacity.

(8) If a nonhazardous industrial solid waste is generated as a result of commercial production of a "new chemical substance" as defined by the federal Toxic Substances Control Act, 15 United States Code §2602(9), the generator shall notify the executive director prior to the processing or disposal of the waste and shall submit documentation requested under §335.513(b) and (c) of this title for review. The waste shall be managed as a Class 1 waste, unless the generator can provide appropriate analytical data and/or process knowledge which demonstrates that the waste is Class 2 or Class 3, and the executive director concurs. If the generator has not received concurrence from the executive director within 120 days from the date of the request for review, the generator may manage the waste according to the requested classification, but not prior to giving ten working days written notice to the executive director.

(9) All nonhazardous industrial solid waste generated outside the state of Texas and transported into or through Texas for processing, storage, or disposal shall be classified as:

(A) Class 1; or

(B) may be classified as a Class 2 or Class 3 waste if:

(i) the material satisfies the Class 2 or Class 3 criteria as defined in §§335.506, 335.507 or 335.508 of this title (relating to Class 2 Waste Determination; Class 3 Waste Determination; Classification of Specific Industrial Solid Wastes); and

(ii) a request for Class 2 or Class 3 waste determination is submitted to the executive director accompanied by all supporting documentation as required by §335.513 of this title. Waste generated out-of-state may be assigned a Class 2 or Class 3 classification only after approval by the executive director.

(10) Wastes which are hazardous solely because they exhibit a hazardous characteristic, which are not considered hazardous debris as defined in 40 CFR §268.2(g), which are subsequently stabilized and no longer exhibit a hazardous characteristic and which meet the land disposal restrictions as defined in 40 CFR Part 268 may be classified according to the Class 1 or Class 2 classification criteria as defined in §§335.505, 335.506, and 335.508 of this title.